

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LBS INNOVATIONS LLC,

Plaintiff,

V.

Civil Action No. 2:11-cv-00142-DF

AARON BROTHERS, INC.;
ACADEMY LTD.

Jury Trial Demanded

DBA ACADEMY SPORTS + OUTDOORS;

ADAMS GOLF INC.;

ADAMS GOLF, LTD.;

COMERICA INCORPORATED;

COMPUSA.COM INC.;

CONN'S, INC.;

FOSSIL INC.;

GAMESTOP, INC.;

HOMESTYLE DINING LLC;

HOTELS.COM, L.P.;

PIER 1 IMPORTS, INC.:

RUG DOCTOR, INC.;

STAGE STORES INC.;

TIGERDIRECT, INC; AND

WHOLE FOODS MARKET, INC.,

Defendants.

[PROPOSED] DOCKET CONTROL ORDER

In accordance with the case Status Conference held herein on the 7th day of July 2011, it is ORDERED that the following schedule of deadlines is in effect until further order of this Court:

STEP	ACTION	RULE	DATE DUE
1	Initial Case Management Conference	Patent L.R. 2-1 FRCP 26(f)	Thursday, July 07, 2011
2	Patentee serves Disclosure of Asserted Claims and Preliminary Infringement Contentions of a reasonable number of representative claims	Patent L.R. 3-1	Monday, June 27, 2011
3	Patentee makes Document Production Accompanying Disclosure	Patent L.R. 3-2	Monday, June 27, 2011
4	Initial Disclosures	FRCP 26(a)(1)	Friday, July 22, 2011
5	Accused Infringer serves Preliminary Invalidity Contentions	Patent L.R. 3-3	Wednesday, August 31, 2011
6	Accused Infringer makes Document Production Accompanying Preliminary Invalidity Contentions	Patent L.R. 3-4	Wednesday, August 31, 2011
7	All parties make Exchange of Proposed Terms and Claim Elements for Construction	Patent L.R. 4-1(a)	Wednesday, September 14, 2011
8	Patentee shall limit the number of asserted claims to no more than ten (10) and notify the accused infringer and Court		N/A
9	All parties meet and confer to discuss list of Proposed Terms and Claim Elements for Construction	Patent L.R. 4-1(b)	Monday, September 26, 2011
10	Deadline for early voluntary mediation at the Parties' request		Thursday, December 22, 2011

STEP	ACTION	RULE	DATE DUE
11	All parties make Exchange of Preliminary Claim Constructions and Extrinsic Evidence	Patent L.R. 4-2	Monday, October 10, 2011
12	All parties meet and confer to discuss Preliminary Claim Constructions and Extrinsic Evidence	Patent L.R. 4-2(c)	Monday, October 31, 2011
13	All parties jointly file Joint Claim Construction and Prehearing Statement	Patent L. R. 4-3	Monday, November 7, 2011
14	Deadline to join other parties without leave of Court, which shall be at least 60 days before the deadline for filing dispositive motions		Thursday, December 15, 2011
15	Deadline to file amended pleadings without leave of Court, which shall be at least 30 days before the deadline for dispositive motions		Monday, January 16, 2012
16	Completion of Claim Construction Discovery	Patent L.R. 4-4	Friday, November 18, 2011
17	Patentee files opening claim construction brief	Patent L. R. 4-5(a)	Monday, December 12, 2012
18	Accused Infringer files responsive claim construction brief	Patent L. R. 4-5(b)	Thursday, January 12, 2012
19	Patentee files reply brief on claim construction	Patent L. R. 4-5(c)	Monday, January 23, 2012
20	ONLY WITH LEAVE OF COURT Accused infringer files sur-reply brief on claim construction		Friday, January 27, 2012

STEP	ACTION	RULE	DATE DUE
21	Parties file Join Claim Construction Chart	Patent L. R. 4-5(d)	Wednesday, February 1, 2012
22	Pre-hearing Conference and technical tutorial if necessary		Wednesday, February 8, 2012
23	Claim Construction Hearing	Patent L.R. 4-6	Thursday, February 9, 2012
24	Court's Claim Construction Ruling		TBD - Court to Schedule
25	Patentee makes Final Infringement Contentions	Patent L.R. 3-6(a)	TBD - Court to Schedule
26	Accused Infringer serves Preliminary Unenforceability Contentions		TBD - Court to Schedule
27	Accused Infringer makes Document Production Accompanying Preliminary Unenforceability Contentions		TBD - Court to Schedule
28	Accused Infringer makes Final Invalidity Contentions	Patent L.R. 3-6(b)	TBD - Court to Schedule
29	Accused Infringer makes disclosure relating to willfulness	Patent L.R. 3-8	TBD - Court to Schedule

STEP	ACTION	RULE	DATE DUE
30	Accused Infringer makes Final Unenforceability Contentions		TBD - Court to Schedule
31	Deadline for completion of all fact discovery, which shall be at least 90 days before the final pre-trial conference		TBD - Court to Schedule
32	Deadline for disclosure of expert testimony on issues for which a party bears the burden of proof	FRCP 26(a)(2) L.R. CV-26(b)	TBD - Court to Schedule
33	Deadline for disclosure of rebuttal expert testimony	FRCP 26(a)(2) L.R. CV-26(b)	TBD - Court to Schedule
34	Deadline for late mediation at the Parties' request		Friday, September 7, 2012
35	Deadline for completion of expert discovery		TBD - Court to Schedule
36	Deadline for objections to other parties' expert witnesses		Thursday, July 26, 2012
37	Deadline for filing dispositive motions, including motions on invalidity and unenforceability, which shall be at least 60 days before the final pretrial conference		Thursday, August 02, 2012
38	Deadline for filing all <i>Daubert</i> motions		Thursday, August 02, 2012
39	Deadline for parties to make pretrial disclosures	FRCP 26(a)(3)	Friday, August 31, 2012

STEP	ACTION	RULE	DATE DUE
40	Patentee to provide to other parties its information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form		Friday, August 31, 2012
41	Defendant and Third-parties to Provide to Patentee their information for Joint Final Pretrial Order, Proposed Jury Instruction and Verdict Form		Tuesday, September 11, 2012
42	Parties to file Proposed Joint Final Pretrial Order, Proposed Jury Instructions, Joint Verdict Forms and Motions in Limine. Prior to initial pretrial conference, parties shall confer with each other regarding the other party's Motions in Limine, deposition designations, and exhibit and shall submit to the Court in writing any objections they may have to the other party's Motions in Limine, deposition designations, and exhibits.		Friday, September 21, 2012
43	Initial Pretrial Conference and hearing on Motions in Limine if required and hearing on objections to deposition designations and exhibits		TBD - Court to Schedule
44	Final Pretrial Conference before Judge David Folsom		Monday, October 01, 2012

STEP	ACTION	RULE	DATE DUE
45	Jury Selection before Judge David Folsom		Tuesday, October 02, 2012

LIMITATIONS ON MOTIONS PRACTICE

Summary Judgment Motions: Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than five (5) pages and shall be filed with the Court no later than sixty (60) days before the deadline for filing summary judgment motions. Answering letter briefs in each of those matters shall be no longer than five (5) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than five (5) days thereafter. The Court may decide the question on the submissions or hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted.

Motions to Strike Expert Testimony/Daubert Motions: Prior to filing any Motions to Strike or Daubert Motions, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than three (3) pages and shall be filed with the Court no later than sixty (60) days before the deadline for filing Motions to Strike or Daubert Motions. Answering letter briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than two (2) pages and filed with the Court no later than five (5) days thereafter. The Court may hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted.

For all of the above mentioned motions, the letter briefs shall be filed without exhibits. Any requests to submit letter briefs after the deadlines outlined above must show good cause.

OTHER LIMITATIONS

1. All depositions to be read into evidence as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence.
2. The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).

3. The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
 - (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

IT IS SO ORDERED.

SIGNED this 20th day of July, 2011.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE